

SEP 09 2019
F I L E D
YUBA COUNTY SUPERIOR COURT
BONNIE SLOAN
SUPERIOR COURT CLERK
BY K. Rice
COURT CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA

**HOWARD JARVIS TAXPAYERS
ASSOCIATION, et al.,**

Plaintiffs,

vs.

COUNTY OF YUBA, et al.,

Defendants.

Case No. CV PT 18-00002127

DECISION ON SUBMITTED MATTER

This is an action for reverse validation/declaratory relief brought to invalidate Measure K, a one percent sales tax increase adopted by a majority of Yuba County voters in November 2018. Plaintiffs contend that Measure K proposed a special tax requiring a two-thirds majority, which it did not obtain.

This matter came on for hearing on August 27, 2019. The parties stipulated that the Court decide the case based on the administrative record, the briefs, the submitted evidence subject to the court ruling on objections thereto, and oral argument. The parties appeared on August 27, 2019, through counsel, as reflected in the minutes, and argued the case. At the end of the hearing the Court took the matter under submission.

The question presented for decision by the Court is whether Measure K proposed a general or special tax. The Court concludes that Measure K proposed a special tax.

A special tax requires a two-thirds majority to pass. California Constitution article XIII C, section 2. Measure K did not obtain the required two thirds majority and, thus, is invalid.

In determining whether Measure K proposed a special tax, the Court looks first to the

1 definition of a special tax. The California Constitution, article XIIC provides: "(d) 'Special tax'
2 means any tax imposed for specific purposes, including a tax imposed for specific purposes,
3 which is placed into a general fund."

4 The Court next looks to the intent of the voters, which outweighs the intent of the Board
5 of Supervisors, which put the measure to the voters. *Rider v. County of San Diego* (1991) 1
6 Cal.4th 1; *Kaiser v. Hopkins* (1936) 6 Cal. 537, 538.

7 To determine what the voters intended, the Court looks to the ordinary and common
8 meaning of the words used in the measure. *Keller v. Chowchilla Water Dist.* (2000) 80
9 Cal.App.4th 1006; *Professional Engineers in Cal. Govt. v. Kempton* (2007) 40 Cal.4th 1016,
10 1037.

11 Measure K begins with the Ballot Question which asks the voters:

12 "YUBA COUNTY PUBLIC SAFETY/ESSENTIAL SERVICES PROTECTION
13 MEASURE. To maintain and protect essential services such as 9-1-1 emergency
14 medical/fire response; improving wildland fire containment; maintaining 24-hours
15 sheriff's patrol; attracting/retaining jobs, businesses, and qualified sheriff
16 deputies; and other essential services, shall the measure to establish a 1 cent
sales tax for 10 years in unincorporated Yuba County, providing an estimated
\$4,300,000 annually requiring accountability, citizen's oversight/audits, and all
revenue controlled locally, be adopted?"

17 The ballot question clearly asks whether the voters are in favor of a tax to fund public
18 safety services, giving specific examples. Public safety and essential services are made
19 equivalent in status and meaning by this text.

20 The ballot also contains the text of the proposed ordinance which provides at Chapter
21 5.60.160, "Use of Sales Tax Proceeds":

22 "The Public Safety/Essential Services Protection Ordinance will provide a secure,
23 local revenue stream to the County that shall be used entirely to maintain and
24 improve public safety services and essential services for the benefit of the
25 unincorporated areas of the County. All proceeds of the tax levied and imposed
hereunder shall be accounted for and paid into a public safety/essential services
trust fund or account designated for use by the County for such specified
purposes."

26 The ordinary and common meaning of these two portions of the ballot is that the tax
27 revenue is dedicated to specific purposes only and not for general government purposes. In
28 fact, at no place in the ballot is the voter plainly informed that the revenue can be used for any

1 and all purposes.

2 The ballot next contains the County counsel analysis. This analysis provides that the
3 revenue generated from the tax is intended to be spent on "...public safety and essential
4 protection services..." followed by a list of public safety services. This language unequivocally
5 equates essential services to public safety.

6 In addition, the arguments in favor of the measure authored by public safety officials
7 overwhelmingly advocate for public safety needs.

8 Thus, the ordinary and common meaning of the language in the texts cited above
9 supports the conclusion that Measure K is a special tax.

10 Case authority also supports this conclusion.

11 The phrase "public safety services" in the Ballot question, with the list of examples,
12 clearly identifies specific purposes. *Neilson v. City of California City* (2005) 133 Cal.App.4th
13 1296, 1310. Even identifying multiple purposes is not inconsistent with the measure proposing
14 a special tax. *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th
15 1178; *Monterey Peninsula Taxpayers Assn. v. County of Monterey* (1992) 8 Cal.App.4th 1520.

16 Measure K gives examples of what are traditional public safety/essential services and
17 includes economic development (job and business attraction/retention) as an essential service.
18 Economic development is essential to the existence of all other government services and is
19 undoubtedly benefitted by more public safety services.

20 The County argues that the word "essential" in the texts cited makes Measure K a
21 proposed general tax because "essential services" are not specific. This argument is not
22 persuasive.

23 A definition of "essential" is "indispensable." (Webster's New Collegiate Dictionary.)
24 Public safety and economic development are not only indispensable but are also specifically
25 listed. The use of the phrase "such as" after essential services in the ballot question does not
26 open up the list of services to be funded to anything the County does. It serves merely to give
27 examples of services in these specific, indispensable areas. And a rule of textual construction
28 known as "*ejudem generis*," when applied to the phrase "and other essential services," means

1 services like those in the preceding list.

2 Finally, Proposition 218, which adopted California Constitution article XIII C, must be
3 “liberally construed to effectuate its purposes of limiting local government revenue and
4 enhancing taxpayer consent.” *Bay Area Cellular Telephone Co. v. City of Union City* (2009)
5 162 Cal.App.4th 686, 698-699. Accordingly, any ambiguity in Measure K must be resolved to
6 effectuate those purposes.

7 In addition to the forgoing textual arguments, Measure K provides that the revenues are
8 to be “accounted for and paid into a public safety services and essential services trust fund
9 entirely” for “such specified purposes.” This language does not tell the voters that revenues
10 are available for general municipal services. Funds placed into a special fund distinct from the
11 general fund can be indicative of a special tax. *Building Industry Assn. of Bay Area v. City of*
12 *San Ramon* (2016) 4 Cal.App.5th 62, 89. This language assures voters that revenues will be
13 spent exclusively on the specified purposes of public safety and economic development and
14 not for anything in the budget.

15 Finally, matters outside the ballot persuade the Court that Measure K proposed a
16 special tax.

17 The administrative record, which includes proceedings before the Board of Supervisors,
18 discloses an overwhelming, almost exclusive, emphasis on the need of revenue from Measure
19 K for public safety purposes. Ninety-two percent of the proposed revenue allocation is for
20 public safety and the rest is for economic development. No other purposes are identified.
21 (AR 125.) This proposed allocation aligns exactly with the language of Measure K.

22 The County’s attorneys argued at the hearing that Measure K, in spite of all the
23 forgoing, proposed a general tax, the revenues from which could be spent on anything. The
24 language in Measure K doesn’t make this revelation. As pointed out by a higher Court,

25 “It seems obvious that a reason for restricting the use of tax revenues in Measure
26 Q was to gain an advantage among voters.... Under the circumstances, if
27 Measure Q had not proposed a special tax, it may not have garnered a higher
28 yes vote than Measure S. Applicable constitutional provisions were enacted to
avoid this type of political maneuvering.”
Howard Jarvis Taxpayers Assn. v. City of Roseville, supra, (2003) 106
Cal.App.4th 1178, 1191(footnote 3).

1 Accordingly, for all of the forgoing reasons, the Court **grants** judgment in favor of
2 Plaintiffs on their first and second causes of action seeking to invalidate Measure K because "it
3 failed to garner the required two-thirds vote required for enactment of a special tax."

4 RULINGS ON REQUESTS FOR JUDICIAL NOTICE
5 AND EVIDENTIARY OBJECTIONS

6 The Court takes judicial notice of Exhibit A and Exhibit B, requested by Plaintiffs in
7 support of their opening brief and **overrules** Defendants' objections thereto. These exhibits
8 are judicially noticed for the limited purpose of recognizing the existence of the documents, not
9 as evidence of the truth of statements contained therein, namely, that the Sheriff of Yuba
10 County formed a committee in support of Measure K named "Keep Yuba County Safe-Yes on
11 Measure K."

12 The Defendant's objections to Exhibits attached to the declaration of Katherine Jenkins
13 and her statements regarding same are **overruled** for the limited purpose of identifying a
14 campaign mailer for Measure K, which contained a slogan stating "Pennies for Public Safety"
15 (Ex. A) and identifying a letter to the editor of a local newspaper authored by a Yuba County
16 Supervisor that pitches Measure K as being about public safety (Ex. B), but are **sustained** as
17 to statements relating to Exhibits C, D, F, and those Exhibits.

18 The Court **overrules** Plaintiffs' objections to Defendant's requests for judicial notice as
19 to various enacted county ordinances.

20 The Court **sustains** Defendant's objections to Plaintiff's evidence proffered in support of
21 Plaintiffs' reply brief.

22 DATED: September 9, 2019

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25 STEPHEN W. BERRIER
26 JUDGE OF THE SUPERIOR COURT
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1 PROOF OF SERVICE BY MAIL

2 I, the undersigned, hereby declare that I am a citizen of the United States, over the age
3 of eighteen years, and not a party to the within action. I am employed at Yuba County
4 Superior Court and my business address is 215 5th Street, Marysville, California.

5 On September 9, 2019, I served the within: DECISION ON SUBMITTED MATTER
6 on the named parties by placing a true copy thereof enclosed in a sealed envelope with
7 postage thereon fully prepaid, in the central depository for mail collection for Yuba County,
8 located at 215 5th Street, Marysville, California, addressed as follows:

9 THOMAS W HILTACHK Counsel for plaintiffs
10 BRIAN T HILDRETH
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12 MICHAEL G COLANTUONO Counsel for defendants
13 DAVID J RUDERMAN
14 CONOR W HARKINS
COLANTUONO HIGHSMITH & WHATLEY PC
420 SIERRA COLLEGE DR STE 140
15 GRASS VALLEY CA 95945-5091

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed on September 9, 2019, at Marysville, California.

18 BONNIE SLOAN
19 CLERK OF THE SUPERIOR COURT

20 By: K. Rice
21 Court Clerk
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